

DAVID BEARD'S ASSIGNEES.

FEBRUARY 29, 1840.

Laid on the table.

Mr. RUSSELL, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims, to whom was referred the petition of Richard S. Coxe, assignee of David Beard, praying compensation for a quantity of powder deposited by said Beard in the United States magazine at Detroit, and surrendered by General Hull to the enemy, at the capitulation of that place in August, 1812, make the following report:*

This claim has been several times before Congress, and was presented at the first session of the nineteenth Congress, in the name of David Beard; at the first session of the twenty-fourth Congress it was again presented, but in the name of Parthenia Beard, as heir-at-law of the said David Beard, he having deceased on the 17th day of April, 1833. The said David Beard, for the pecuniary consideration in the said assignment mentioned under his hand and seal, "did sell, convey, assign, and set over," unto Richard S. Coxe, &c., a claim recited therein against the Government of the United States. Under that assignment the petitioner claims a right to receive compensation for the loss of the eleven kegs of gunpowder mentioned in the report hereto annexed.

Whatever right Beard had, passed to the petitioner by this assignment; and the question is, whether Beard was entitled to remuneration for the loss of the eleven kegs of powder. By the report referred to, it appears that the powder was deposited for "safekeeping" with the deputy quartermaster general on the 14th of August, 1812. The attack was made upon the fort by the British army under the command of General Brock, on the 15th, and on the 16th of August, 1812, the fort was surrendered by General Hull to the British army; and thus these eleven kegs of powder fell into the possession of the British army, with the property of the United States then in the fort. For several days before the attack was made, it was universally believed, on both sides of the line, that an assault was to be made upon the garrison at Detroit; and, upon the American side, it was believed that the fort was impregnable. The garrison was the refuge sought for protection, and this powder was probably deposited there, believing it to be a more safe depository than any which offered. No compensation was to be given for safekeeping; and no risk could be encountered by the bailee, other than for want of ordinary care.

The measure of care and diligence which could be required of him was only such as, in the exercise of a sound discretion, he would take of his own property, even if the deputy quartermaster had been acting in his in-

dividual capacity. A bailee without recompense, says a distinguished elementary writer on the law of bailment, "is answerable only for gross neglect, or for a violation of good faith." This property was received and deposited with that of the like kind belonging to the United States in what, at the time, was believed to be a safe depository; but, from the casualties of war, the whole awaited a common destiny, and was lost to the owners. An equal degree of care was bestowed upon both, and no other could be required by Beard than such as his bailee took of his own: that was bestowed. The committee, therefore, apprehend that, if the question were to be litigated between individuals, the bailee would stand acquitted. But the Government is sought to be charged, upon the ground that the deputy quartermaster was its agent, and his acts and liabilities were binding upon his principal. That the principal is liable for the act of his agent, where that agent acts within the scope of the power delegated, and without which act the power could not be executed, may be correct. But, was this quartermaster clothed with the power of casting upon the Government the duties and responsibilities of a bailee of individual property? His powers and duties are limited by law, and, if transcended by him, the liability of Government ceases when the act done was not essential to carry out the object of the appointment; and this the committee conceive to be such a case. It is a principle established by judicial authority, that an agent with limited powers cannot bind his principal when he transcends those powers; and he who transacts business with such agent upon the *credit* of his principal, is bound to know the extent of his authority; if it were not so, the numerous agents of this Government would possess the power of compromising its funds beyond the power of its revenue to meet: sound policy, as well as the laws of the land, repel such an assumption. A steady adherence to this principle is necessary to secure the Government against imposition, and protect individuals in the enjoyment of their just and equal rights. Beard, therefore, had no claim, and could transfer none to the petitioner.

The committee have also examined the report hereto annexed, made at the first session of the twenty-fourth Congress, and agree with that committee in the result to which they arrived, and adopt that as a part of this report; and offer the following resolution:

*Resolved*, That the prayer of the petitioner ought not to be granted.

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MAX 31, 1836.

*The Committee of Claims, to whom was referred the petition of Parthenia Beard, assignee of David Beard, report:*

That David Beard, father of the present claimant, presented his petition to Congress for relief, on account of property mentioned in the present petition, at the first session of the nineteenth Congress. The Committee of Claims reported against allowing the claim on the 20th day of April, 1826, which is recorded in book 5, page 775, to which the committee refer, and make the same a part of this report.

The claim is for eleven kegs of powder, which was deposited in the United States magazine at Detroit in 1812.

When the papers were formerly presented, there was a receipt, signed by William McComb, deputy quartermaster general, stating the conditions on which the powder was taken. The receipt was as follows: "I do hereby certify that, on this day, 14th of August, 1812, I have received in the public magazine of Detroit, for safekeeping, eleven kegs of gunpowder, marked 'Richmond I F' warranted,' and said powder to be returned to them on demand." This receipt is not now among the papers. It appears from the Journal, that leave was given to the petitioner to withdraw his papers on the 22d of May, 1826. The present petitioner says that there was a mistake in drawing the receipt, and that it has been corrected by a deposition given by the said William McComb, on the 6th of July, 1823.

That deposition is among the papers, but does not, in any particular, disprove the receipt. It was first drawn so as to embrace the name of David Beard & Company; but was erased as to them, and the deposition now speaks of an order on the merchants of Detroit, generally, to deposite what powder they had in their possession in the magazine, for the public service, should the same be wanted. He then states that the merchants did deposite a number of kegs; but there is no designation of persons or companies.

Philip L'Ecuier, under date of the 5th of March, 1836, testifies he was an inhabitant of Detroit in August, 1812, and that the powder of David Beard was deposited in the old banking-house, in a fire-proof vault; and that General Hull, on the 14th or 15th of August, 1812, directed this powder to be removed to the United States magazine, which was received by William McComb, then acting artillery quartermaster. To the best of his knowledge and recollection, he is enabled to state the kegs were marked with the letters I F.

After so great a length of time, and when this testimony is brought forward to confront a writing, the committee wish to know how this witness is enabled to state what took place with so much accuracy and minuteness. What was his connexion with the parties, or with the transaction? Was the order a general one, as testified to by Mr. McComb in 1823; or was it a special one, directed to Mr. Beard?

We have, first, a copy of the receipt given by Mr. McComb to Mr. Beard, which remained in his possession until 1831, when he presented his claim to Congress; and, second, the deposition of the same Mr. McComb, taken in 1823, to prove that an order was given to the merchants, generally, to deposite their powder in the magazine, for the public service, should the same be wanted. Neither of these papers sustains the deposition of Mr. L'Ecuier.

It is singular there should have been a mistake made in drawing the receipt, so as to have it appear that the powder was received on deposite, and to be returned when demanded, if it was removed there by order of General Hull. And if such mistake was made, it is singular that Mr. Beard, having the receipt in his possession, should not have discovered it; and that it should not have been corrected by Mr. McComb when he gave his deposition in 1823. The erasing of the name of "Beard & Company" from that deposition shows that the witness would not testify that the powder was delivered at the magazine under any order from General Hull; and the phraseology of the receipt shows that the agreement was a special one, and that the powder was delivered for safekeeping, and not for use.

However safe the vaults of the bank might have been against fire, it is not improbable that, two days before the surrender of Detroit, it was supposed the magazine, defended by the troops of the United States, would be still safer, so far as danger was apprehended from the enemy. If the United States used the powder, they are liable to pay for it; but without such proof, and when a special agreement has been produced by the said David Beard, and now remains unexplained, the committee do not think they are holden to make any compensation.

The following resolution is submitted :

**Resolved,** That the petitioner is not entitled to relief.